

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**IN RE: REALPAGE, INC., RENTAL
SOFTWARE ANTITRUST LITIGATION
(NO. II)**

**Case No. 3:23-MD-3071
MDL No. 3071**

**This Document Relates to:
ALL CASES**

Chief Judge Waverly D. Crenshaw, Jr.

**NOTICE OF ANTICIPATED NEW MOTIONS TO DISMISS AND RENEWED
MOTIONS TO DISMISS TO BE FILED BY DEFENDANTS**

The Court instructed Defendants to file a notice that (i) “identif[ies] and briefly describe[s] any *new* motions to dismiss that they anticipate filing with respect to the Multi-Family Consolidated Complaint” and (ii) “identi[fies] and briefly describe[s] *all* motions they intend to file with respect the Student-Housing Consolidated Complaint.” ECF 495 at 2. At the August 7, 2023 hearing the Court also instructed Defendants to indicate in the notice which motions Defendants “anticipate filing” with respect to the Multifamily actions that “were filed earlier.” Tr. at 21:20-22:1.

The undersigned Defendants hereby provide notice of the motions they intend to file with respect to both the Second Consolidated Amended Complaint for the Multifamily actions (the “Multifamily CAC”) and the First Consolidated Amended Complaint for the Student Housing actions (the “Student CAC”) (together, the “CACs”). Defendants met and conferred with Plaintiffs on September 14, 2023, regarding these anticipated motions.

Previous Motions Defendants Intend to Refile: Defendants intend to file the same types of motions as were filed previously against the Multifamily CAC. Defendants intend to file:

- An omnibus motion to dismiss for failure to state a claim under Rule 12(b)(6) on behalf of all Multifamily Defendants. Defendants request the same page limits as the Court previously allowed: 40 pages for the opening brief, 40 pages for the opposition, and 15 pages for reply;
- A motion to dismiss brought by Defendants who are property managers. Defendants request the same page limits as the Court previously allowed: 12 pages for the opening brief, 12 pages for the opposition, and 5 pages for reply;
- A motion to dismiss brought by the Thoma Bravo Defendants. The Thoma Bravo Defendants request the same page limits as the Court previously allowed: 12 pages for the opening brief, 12 pages for the opposition, and 5 pages for reply;
- A motion to dismiss brought by Defendants who are LRO users. Defendants request 12 pages for the opening brief, 12 pages for the opposition, and 8 pages (instead of 5) for the reply;
- A motion to dismiss based on personal jurisdiction and venue arguments. If the parties cannot resolve issues relating to personal jurisdiction and venue in various actions (ECF 353), one or more defendants will bring motions to dismiss based on the absence of personal jurisdiction and venue. Where possible, and depending on the remaining jurisdictions at issue (if any), defendants will endeavor to file a consolidated motion (or motions) to dismiss. Accordingly, Defendants request 12 pages for any opening brief and 8 pages for reply;
- A motion to compel arbitration and/or enforce class action waivers.¹ Based on the

¹ This motion reflects the information Defendants have been able to discover to date. Defendants are continuing their efforts to identify relevant leases and related documents that may contain arbitration provisions and/or class actions waivers. Defendants intend to seek appropriate relief

amendments made to the Multifamily CAC, Defendants expect that more named plaintiffs will be impacted by this motion than in the previous iteration, and thus Defendants request 25 pages for the opening brief and 12 pages for reply.

New Motions Applicable to Multifamily CAC: Based on the amendments made to the Multifamily CAC, certain Defendants intend to file the following motions:

- A motion to dismiss brought by Defendant Apartment Income REIT, Corp. d/b/a AIR Communities (“AIR”) based on Plaintiffs’ agreement to withdraw allegations against AIR in Paragraph 68 of the Multifamily CAC. AIR requests 10 pages for the opening brief and 8 pages for the reply.
- A motion to dismiss brought by Defendant Bell Partners Inc. to dismiss Plaintiff Nancy Alexander’s claims based on her lack of standing in any alleged relevant geographic market. Bell Partners Inc. requests 10 pages for the opening brief and 8 pages for the reply.

Motions Applicable to Student CAC: Because the Student CAC is “new for everybody,” the Court asked Defendants to identify “the anticipated motions” Defendants would file with respect to the Student actions and “page needs.” Tr. 15:12-23. The Court further acknowledged that there “may be some desire for individual defendants to brief separately.” Tr. 19:23-20:3. Defendants intend to file four motions with respect to the Student CAC:

to enforce these agreements and reserve all rights to compel arbitration and/or enforce class action waivers as discovery reveals additional lease agreements and related documents between Defendants and named Plaintiffs.

In addition, many Defendants also have agreements with putative class members that contain arbitration agreements and class action waivers. Defendants in no way waive their ability to enforce these provisions and hereby provide notice that they intend to assert defenses based on arbitration agreements and class action waivers as to putative class members at the appropriate time.

- One omnibus motion to dismiss for failure to state a claim under Rule 12(b)(6) on behalf of all Student Defendants. Student Defendants request the same page limits as the Court previously allowed for the omnibus motion to dismiss the Multifamily CAC: 40 pages for the opening brief, 40 pages for the opposition, and 15 pages for reply. The Student CAC contains unique allegations and theories—including a different alleged conspiracy and different alleged relevant markets than in the Multifamily CAC, as well as allegations of fraudulent concealment not present in the Multifamily CAC. Even where the Multifamily and Student CACs make broadly similar allegations, Student Defendants must still tailor their arguments to the specific allegations in the Student CAC. Defendants considered the possibility of a Student motion that is shorter and attempts to cross-reference arguments in the Multifamily motion, but Defendants believe this will make the briefing less effective and coherent, and it will require the Court to shuffle back and forth between the two briefs (contrary to the Court’s Judicial Preferences²). In sum, Defendants believe they need the same page limits as the Court granted for the Multifamily omnibus motion in order to fully and efficiently address the separate and distinct allegations of the Student CAC.
- A motion to dismiss brought by the Thoma Bravo Defendants, with the same page limits as those applicable to the First Multifamily CAC: 12 pages for opening brief; 12 pages for the Student Plaintiffs’ opposition; 5 pages for reply.
- A motion to dismiss brought by Defendant TREV Management II LLC on the ground that Plaintiffs have failed to state a claim based on their limited allegations

² <https://www.tnmd.uscourts.gov/sites/tnmd/files/Judicial%20Preferences%2020200420.pdf>

of TREV's ownership interests in another "Lessor Defendant," with the same page limits as those applicable to other individual Defendant motions: 12 pages for opening brief; 12 pages for the Student Plaintiffs' opposition; 5 pages for reply.

- A motion to compel arbitration and/or enforce class action waivers.³ This motion will be shorter than the corresponding Multifamily motion because Defendants expect fewer Plaintiffs to be implicated. Defendants request 12 pages for the opening brief and 8 pages for reply.

Motion Applicable to Both CACs: As Defendants have previously explained in footnote 2 of the motion to dismiss Multifamily Plaintiffs' First Amended Consolidated Class Action Complaint, the "ghost plaintiffs"—*i.e.*, the forty-six (46) individuals who are not named in either CAC as a plaintiff but whom Plaintiffs nevertheless contend are still in the cases because they are named in various individual actions in this MDL, *see* ECF 529, Appendix B ("Plaintiffs Who Are in this MDL")—should be dismissed from the case. The Parties have met and conferred and are in agreement that these plaintiffs should be dismissed, and Defendants expect that Plaintiffs' counsel will soon file papers to effect those dismissals. A motion to dismiss these ghost plaintiffs brought by Defendants will be necessary only if that process breaks down. Defendants further note that some of these ghost plaintiffs also have arbitration provisions and/or class action waivers, and personal jurisdiction/venue issues, which will need to be briefed if they are not dismissed (voluntarily or by motion). With the resolution of this issue, Defendants do not have anything to raise at the September 29, 2023 status conference.

* * *

³ *See supra* at 2 n.1.

While this notice reflects Defendants' best summary of their anticipated motions and arguments therein at this time, Defendants continue to evaluate the allegations in both CACs and reserve the right to present other arguments in their motions.

DATED: September 21, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record registered on the CM/ECF system.

DATED this 21st day of September, 2023.

/s/ Jay Srinivasan

Jay Srinivasan